

Decision 13-09-030 September 19, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

City of Jurupa Valley,

Complainant,

vs.

City of Riverside and Riverside Public
Utilities,

Defendants.

Case 13-02-004
(February 6, 2013)

DECISION DISMISSING THE COMPLAINT

1. Summary

The City of Jurupa Valley's complaint (Complaint) seeks a declaratory judgment from the Commission finding that the Commission, as opposed to the City of Riverside, is the proper lead agency¹ for the Riverside Transmission Reliability Project (Project). The Complaint also seeks revision and recirculation of the Draft Environmental Impact Report for the Project in order to provide input and comments. The Complaint is dismissed for lack of jurisdiction. This proceeding is closed.

¹ See California Environmental Quality Act, Cal. Pub. Resources Code § 21607 (defining lead agency as "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment").

2. Background

The City of Jurupa Valley (Complainant or Jurupa Valley) was formally incorporated on July 1, 2011. Jurupa Valley covers approximately 47 square miles and is located within the County of Riverside. The City of Riverside is also located within the County of Riverside. Riverside Public Utilities is a department within the government of the City of Riverside and is not considered a separate legal entity from the City of Riverside. For purposes of this decision, the City of Riverside and Riverside Public Utilities will be referred to collectively as the City of Riverside or Defendants.

The City of Riverside, with the combined efforts of Southern California Edison Company (SCE), is planning to construct the Riverside Transmission Reliability Project (Project) within the city limits of the City of Riverside and Jurupa Valley. The Project consists of the construction of a 10-mile double-circuit 230,000 kilovolt (230 kV) transmission line, a 230 kV substation (Wildlife Substation), a new 230/69 kV electrical substation (Wilderness Substation), and five new 69 kV sub-transmission line segments. The Project will also include the relocation and undergrounding of existing distribution lines.

Both the installation and the operation of the transmission lines will occur within the boundaries of Jurupa Valley. The City of Riverside has assumed the lead agency status for the Project. In mid-2011, the City of Riverside completed the Draft Environmental Impact Report (DEIR) for the Project and released it for comment.

Jurupa Valley asserts that the Commission should assume the lead agency role for the Project. Jurupa Valley seeks relief from the Commission in the form of a declaratory judgment finding that the Commission, as opposed to the City of

Riverside, is the proper lead agency for the Project. Additionally, Jurupa Valley seeks revision and recirculation of the Draft EIR for the Project.

In its response to the Jurupa Valley's complaint, the City of Riverside filed a motion to dismiss the complaint (Motion). In its Motion, the City of Riverside asserts that it is the proper lead agency for the Project. Further, the City of Riverside asserts that the Commission lacks jurisdiction to hear the complaint. Because the Motion raises jurisdictional issues, before considering the merits of the issues raised by the Complaint, the Commission must first determine whether it has jurisdiction to hear this Complaint.

On February 5, 2013, while the Complaint was pending before the Commission, the City of Riverside certified the Final EIR for the Project,² and Jurupa Valley since filed a CEQA lawsuit before the Los Angeles Superior Court, Case File BS 143085, challenging the adequacy of the Final EIR.³

3. Discussion

The City of Riverside posits three arguments in its Motion. First, it asserts that the Commission lacks jurisdiction to hear the Complaint because the City of Riverside is not a public utility. Second, the City of Riverside asserts that there is no actual lead agency dispute ripe for resolution; and alternatively, even if there was such a dispute, the Commission lacks jurisdiction because any disputes regarding the proper lead agency for a project must be directed to and be resolved by the Office of Planning and Research, not the Commission. Third, the City of Riverside asserts that the Complaint should be dismissed because the City

² The City of Riverside's Comment to the Proposed Decision, dated September 9, 2013, at 2.

³ Jurupa Valley's Reply Comment dated September 13, 2013 at 2.

of Riverside is, indeed, the proper lead agency for the Project. The Commission dismisses this Complaint for lack of jurisdiction.

3.1. The Commission Lacks Jurisdiction to Hear the Complaint Against the City of Riverside

The City of Riverside contends that the Commission lacks jurisdiction to hear this Complaint because the Commission's jurisdiction does not extend beyond the oversight of public utilities. Jurupa Valley does not dispute the fact that the City of Riverside is not a public utility. However, Jurupa Valley avers that the Commission, nonetheless, has jurisdiction to consider this Complaint against the City of Riverside. According to Jurupa Valley, the Project involves "substantial components . . . within the Commission's exclusive jurisdiction and domain."⁴ Jurupa Valley, however, did not cite any statutory authority based upon which the Commission's jurisdiction would extend to the Defendants, who are not public utilities.

Under Pub. Util. Code § 1702, the Commission maintains jurisdiction over public utilities, not municipally-owned utilities or governmental agencies.⁵ Any expansion of the Commission's jurisdiction is made possible only through the Legislature's plenary power to confer additional authority upon the Commission.⁶

Here, in order for the Commission to assume jurisdiction over the City of Riverside, Jurupa Valley must demonstrate "(1) that the California Constitution

⁴ City of Jurupa Valley's Response to Riverside's Motion to Dismiss Complaint at 2.

⁵ See Cal. Pub. Util. Code § 1702.

⁶ See Cal. Const., art XII, § 5; see also *County of Inyo v. Public Util. Com.* (1980) 26 Cal.3d 154, 160.

permits the Legislature to grant the Commission such jurisdiction . . . and (2) that the Legislature has enacted a statute exercising this authority.”⁷

Jurupa Valley, in its Response to the Motion (Response), has cited to some authorities that illustrate the Commission’s permitting authority under General Order No. 131-D to issue certificates of public convenience and necessity to regulated public utilities for certain transmission facilities.⁸ However, Jurupa Valley has not cited any legal authority that establishes the Commission’s jurisdiction over the City of Riverside which is not a public utility. The Commission’s jurisdiction remains limited to public utilities, and consideration of this Complaint, as against the City of Riverside, remains outside the scope of the Commission’s jurisdiction.

This decision remains consistent with past Commission decisions and other mandatory authority regarding questions of jurisdiction over non-public utility entities.⁹ In *California Alliance for Utility Safety and Education v. San Diego Gas & Electric Company and the City of San Diego* (California Alliance), the Commission affirmed the assigned Administrative Law Judge’s (ALJ’s) dismissal of the complaint against the City of San Diego for lack of jurisdiction over a

⁷ *County of Inyo*, 26 Cal.3d at 160.

⁸ See Jurupa Valley’s Response at 2-3.

⁹ See, e.g., *id.* (affirming the Commission’s decision to dismiss a complaint against a municipally owned company for lack of jurisdiction); *California Alliance for Utility Safety and Educ. v. San Diego Gas and Elec. Co.* (2006) Decision (D.) 06-04-047 (confirming an ALJ decision to dismiss a complaint against a city for lack of jurisdiction); *George Heider & Sons v. City of Azusa* (2012) D.12-06-026 (“The City of Azusa is not a public utility. This Commission has no authority over the rates . . . of water and sewer services by the City.”); *Pacific Power and Light Co. v. Surprise Valley Electrification Corp.* (9th Cir. 1993) 985 F.2d 573 (noting that the “[t]he PUC has no jurisdiction over municipally owned utilities unless specifically authorized by statute”).

non-public utility¹⁰ and reasoned that “[t]he City is not a public utility . . . [and thus,] [t]he complaint may therefore not be pursued against the City.”¹¹

Jurupa Valley attempts to distinguish between *California Alliance* and the Complaint at hand by asserting that while *California Alliance* involved a jurisdiction question, it did not involve a lead agency dispute. Further, Jurupa Valley contends that *California Alliance* is an unpersuasive authority because that decision “summarily confirmed in a footnote . . . the ALJ’s dismissal of the city, with no reasoning or statutory basis for . . . [the] dismissal by either the Commission or the ALJ. . . .”¹² We disagree with Jurupa Valley.

For several reasons, we find *California Alliance* persuasive in our review of the issues raised in the Complaint and the Motion. First, although *California Alliance* did not involve a lead agency dispute, it did involve a jurisdictional question, similar to the one presented here by Jurupa Valley. Likewise, although *California Alliance* did not involve a lead agency dispute, this Commission also notes that the Complaint presented by Jurupa Valley also fails to involve an actual lead agency dispute. By its own admission, Jurupa Valley asserts that “there is currently not a dispute between Riverside and the CPUC as to who should be the ‘lead agency’ for the Project.”¹³ With no actual lead agency dispute, Jurupa Valley’s Complaint remains remarkably analogous to *California Alliance*. In addition, even if an actual lead agency dispute was presented here,

¹⁰ *California Alliance for Utility Safety and Educ. V. San Diego Gas & Elec. Co.* (2006) D.06-04-047.

¹¹ ALJ Ruling Granting Motion to Dismiss, April 6, 2005 at 1-2.

¹² City of Jurupa Valley’s Response to Motion to Dismiss Complaint at 4.

¹³ *Id.* at 9.

the facts remain that, consistent with the holding in *California Alliance*, the Commission lacks jurisdiction to consider complaints against non-public utilities.

Based on the foregoing, this Complaint must be dismissed for lack of jurisdiction over the named Defendants.

3.2. There Is No Actual Lead Agency Dispute Ripe For Resolution And Commission Lacks Jurisdiction To Hear This Complaint Because It Does Not Have The Authority To Resolve Lead Agency Disputes

The City of Riverside contends that there is no actual lead agency dispute ripe for resolution here; and alternatively, even if there was such a dispute, the Commission lacks jurisdiction because any disputes regarding the proper lead agency for a project must be directed to and be resolved by the Office of Planning and Research, not the Commission. In response, Jurupa Valley agrees with the City of Riverside in that there is no *current* lead agency dispute.¹⁴ However, in contrast to the City of Riverside, Jurupa Valley asserts that the Commission *should* assert its right to assume the Lead Agency role for the Project.¹⁵ Unless that occurs, Jurupa Valley asserts, a current request for resolution directed to the Office of Planning and Research would be improper.¹⁶ Thus, Jurupa Valley motions for the Commission to officially consider whether it should assume the Lead Agency role for the Project, thereby creating a Lead Agency dispute.

We agree with the City of Riverside that there is no actual lead agency dispute ripe for resolution here; and even if there was such a dispute, the

¹⁴ *Id.* (acknowledging that “there is currently not a dispute between Riverside and the CPUC as to who should be the ‘lead agency’ for the Project”).

¹⁵ *Id.*

¹⁶ *Id.*

Commission lacks jurisdiction because any disputes regarding the proper lead agency for a project must be directed to and be resolved by the Office of Planning and Research, not the Commission.

First, the City of Riverside correctly notes that there is currently no lead agency dispute associated with the Project; therefore, there is no issue ripe to be resolved. By its own admission, Jurupa Valley asserts that “there is currently not a dispute between Riverside and the CPUC as to who should be the ‘lead agency’ for the Project.”¹⁷ Specifically, while Jurupa Valley is requesting that the Commission assume the role of the lead agency for the Project, the lead agency role has long been assumed by the City of Riverside. In addition, no other agency, including the Commission, has asserted any objection that they should be the lead agency for the Project, instead of the City of Riverside.

Second, Jurupa Valley’s basis for asserting that the Commission should assume the lead agency role for the Project is also flawed. Jurupa Valley notes that it has concerns with the City of Riverside’s Draft EIR. As an example of its concern, Jurupa Valley notes that the Draft EIR “failed to identify significant impacts from the Project and failed to employ enforceable mitigation measures.”¹⁸ Jurupa Valley also notes that the Commission’s Energy Division has filed comments with the lead agency, presenting questions and noting concerns regarding the Draft EIR. It appears that the Commission has and is continuing to work with the City of Riverside to raise and address the Commission’s concerns and to revised the Draft EIR prior to its finalization, through the comment process. Further, nothing in the record suggests that the

¹⁷ *Id.* at 9.

¹⁸ City of Jurupa Valley’s Amended Complaint at 5.

City of Riverside has not or will not be addressing the Commission's concerns, as reflected in the filed comments to the Draft EIR, prior to the adoption and release of the Final EIR. Jurupa Valley's Complaint appears to be raising a premature attack on an EIR that is not yet finalized.

An update since Jurupa Valley's filing of the Complaint is that while the Complaint was pending before the Commission, the City of Riverside certified the Final EIR for the Project, and Jurupa Valley thereafter filed a CEQA lawsuit before the Los Angeles Superior Court to challenge the adequacy of the Final EIR and to raise these very concerns.¹⁹

In sum, the Complaint does not present a ripe issue for the Commission's resolution. With the update from parties that the Final EIR is now certified and under litigation, we are even less convinced that the Commission has any basis to extend its jurisdiction to a non-public utility to attempt to assert lead agency status in a CEQA process which has ended with the certification of Final EIR. Based also on this update, we note one of the main relief sought by Jurupa Valley (revision and recirculation of the Draft EIR for the Project in order to provide input and comments) is now moot, since the Final EIR has already been certified and is now the subject of review by the Los Angeles Superior Court. Moreover, the essential fact still remains here: there is admittedly still no lead agency dispute. Absent any agency stepping forward to dispute the City of Riverside's lead agency status and to take on that role instead, there is no dispute to be resolved. If there is such a dispute, the Commission lacks jurisdiction because, pursuant to California Environmental Quality Act (CEQA), Cal. Code Reg. § 15053(a), any disputes regarding the proper lead agency for a project must be

¹⁹ Jurupa Valley's Reply Comment dated September 13, 2013, at 2.

directed to and be resolved by the Office of Planning and Research, not the Commission.²⁰

3.3. The Commission Lacks Jurisdiction to Hear This Complaint; Thus, It Will Not Address the Propriety of The City of Riverside's Lead Agency Role

As an alternative argument, the City of Riverside contends that the Complaint must be dismissed because the City of Riverside is, indeed, the proper lead agency for the Project. This assertion, however, requires analysis of the merits of the Complaint which contends the City of Riverside is not the proper lead agency. The Commission does not need to consider the merits of this Complaint, over which it has determined that the Commission has no jurisdiction. Thus, having already determined that the Commission lacks jurisdiction over the Defendants, the Commission declines to address this alternative argument presented by the City of Riverside in its Motion that it is the proper lead agency for the Project.

4. Proceeding Category and Need for Hearing

The Instruction to Answer filed on March 14, 2013 categorized this Complaint as adjudicatory as defined in Rule 1.3(a) and anticipated that this proceeding would require evidentiary hearings.

Due to lack of jurisdiction, *inter alia*, this complaint must be dismissed, and the need for evidentiary hearings determination is changed to state that no evidentiary hearings are necessary.

²⁰ See CEQA, Cal. Code Reg. § 15053(a) (noting that “[i]f there is a dispute over which of several agencies should be the Lead Agency for a project . . . any public agency, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution”).

5. Comments on the Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on September 9, 2013, and reply comments were filed on September 13, 2013 by Jurupa Valley and the City of Riverside.

Both sides generally reiterate their respective arguments which they raised previously in this proceeding, including the Complaint and the Motion. All those arguments were considered in the proposed decision. Aside from the reiterations, both parties present, in the comments, a note of factual clarification and procedural update indicating that the Final EIR has now been certified, as of February 5, 2013. Moreover, the City of Riverside also confirmed that it has been working actively with Commission staff to address the issues raised in the Commission's comment letters to the Draft EIR and that, as anticipated in the proposed decision, the City of Riverside "actually shared its written responses to comments with Commission staff and discussed them with Commission staff several weeks before Riverside actually certified the F[inal] EIR."²¹

On the foregoing two points, the City of Riverside filed a request for official notice of its Exhibit 1 (Resolution No. 22493 adopted by its City Council certifying Riverside's FEIR on February 5, 2013) and Exhibit 2 (Selected excerpts of the FEIR generally illustrating Commission staff's comments to the DEIR and Riverside's responses to those comments in the FEIR).²² Pursuant to the

²¹ The City of Riverside's Comment to the Proposed Decision, dated September 9, 2013, at 2.

²² The City of Riverside's Request for Official Notice, dated September 9, 2013.

Commission's Rules of Practice and Procedure, Rule 13.9, and California Evidence Code sections 452 and 453, we take official notice of these two exhibits.

Additionally, Jurupa Valley admits, in its reply comment, that since Jurupa Valley filed the Complaint, Jurupa Valley has also filed a CEQA lawsuit to challenge the adequacy of the Final EIR,²³ to raise the concerns it had raised in its Complaint in this proceeding.

In short, Jurupa Valley's comments have not presented any new and persuasive arguments. Jurupa Valley's comments have not presented any apposite or persuasive legal authorities to support its position that its Complaint should not be dismissed. Jurupa Valley's comments have not presented any legal or factual errors in the proposed decision. Finally, both sides admit the CEQA process has ended with the City of Riverside's certification of the Final EIR on February 5, 2013. Thus, it makes no sense now to revisit the issue of whether the Commission, instead of the City of Riverside, should have been the lead agency at this point when that process has already ended with the certification of the Final EIR. Moreover, Jurupa Valley presents an admission that it has taken its legal challenge of its concerns associated with Final EIR in the Los Angeles Superior Court. We are now further persuaded by this updated development that the lead agency issue, even if there had been a dispute, should have been addressed at the beginning, not end, of the CEQA process. In fact, here, we still do not have a lead agency dispute admitted by both sides and the CEQA process has ended, except the certified Final EIR is under legal challenge in a civil tribunal.

²³ Jurupa Valley's Reply Comment dated September 13, 2013, at 2 (citing Los Angeles County Superior Court Case File BS 143085.)

Based on the foregoing, we are not persuaded by Jurupa Valley that its Complaint should not be dismissed.

6. Assignment of the Proceeding

Commissioner Michel Peter Florio is the assigned Commissioner and Kimberly H. Kim is the assigned ALJ in this proceeding.

Findings of Fact

1. The City of Jurupa Valley seeks declaratory relief from the Commission finding that the Commission, as opposed to the City of Riverside, is the proper lead agency for the Project.
2. The City of Jurupa Valley also seeks revision and recirculation of the Draft EIR for the Project in order to provide input and comments.
3. The City of Riverside is a public agency, not a public utility.
4. The Commission lacks jurisdiction over the City of Riverside.
5. There is no dispute concerning the lead agency role of the City of Riverside in regards to the Project.
6. The CEQA process has ended with the City of Riverside's certification of the Final EIR on February 5, 2013.
7. The City of Jurupa Valley has filed a CEQA lawsuit challenging the adequacy of Final EIR and raising its concerns associated with Final EIR in the Los Angeles Superior Court.
8. The City of Riverside filed a request for official notice of its Exhibit 1 (Resolution No. 22493 adopted by its City Council certifying Riverside's FEIR on February 5, 2013) and Exhibit 2 (Selected excerpts of the FEIR generally illustrating Commission staff's comments to the DEIR and Riverside's responses to those comments in the FEIR).

Conclusions of Law

1. The Commission has no jurisdiction over municipally-owned utilities or governmental agencies such as the City of Riverside.
2. The Commission is without jurisdiction to grant the reliefs that the City of Jurupa Valley seek.
3. The Commission should take Exhibits 1 and 2 of the City of Riverside's request for official notice pursuant to Commission's Rules of Practice and Procedures, Rule 13.9, and California Evidence Code sections 452 and 453.
4. Hearings are not necessary.
5. The Complaint should be dismissed.
6. For administrative efficiency, this order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The reliefs the City of Jurupa Valley seeks are denied.
2. Case 13-02-004 is dismissed.
3. Official notice is taken as to Exhibits 1 and 2 of the City of Riverside's request for official notice.

4. The hearing determination is changed to no hearings necessary.
5. This proceeding is closed.

This order is effective today.

Dated September 19, 2013, at San Francisco, California.

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

CARLA J. PETERMAN

Commissioners